IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.09.2007

Coram :

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN
and
THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

Tax Case (Appeal) No.252 of 2004

The Commissioner of Income Tax,
Tamil Nadu III, Madras. Appellant

v.

K.Narasa Reddy Respondent

Tax Case Appeal preferred under section 260A of the Income tax Act, 1961 against the order dated 30.05.2001 made in IT(SS)A.No.78/Mds/97 by the Income Tax Appellate Tribunal, 'A' Bench, Madras.
Tax Case Appeal 252 of 2004 against the order of the Assistant Commisssioner of Income Tax ,Central Circle III(3), Madras.34. dated 28.2.97 Assessment year 1986-87 to 1996 -97 in PA No. /G1 No.47-098-Cy-9506

For Appellant : Mr.J.Narayanasamy,
Jr. Standing Counsel for IT
For Respondent : Mr.Venkatanarayanan
for M/s.Subbaraya Iyar Padmanabhan

JUDGMENT

(Judgment of the Court was delivered
by K.RAVIRAJA PANDIAN, J.)

The assessee has filed the appeal framing the following questions of law :

1.Whether the Tribunal was right in deleting the undisclosed income relating to the assessment year 1995-96 and 1996-97 when the return was filed long after the stand.
2. Whether the Income Tax Appellate Tribunal was right in cancelling the addition of Rs.1,60,000/- under section 2(22) (e) as deemed dividend?

2. The relevant block assessment period in this case is from 1986-87 to 1996-97. The respondent assessee is the Managing Director of Kences Foundation (P) Limited, a company engaged in the construction and sale of flats with its registered office at 33-A, B.N.Road, T.Nagar,

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

Madras. There was a search in the residential premises as well as the business premises of the assessee under section 132 of the Income Tax Act, 1961 on 23.02.1996. Consequent to the search block assessment has been initiated and an assessment order has been made. In that assessment, an addition has been made as undisclosed income. The incomes were declared vide return filed on 30.07.1996 was at Rs.2,24,800 for the assessment year 1995-96 and Rs.1,83,480/- for the assessment year 1996-97 vide return filed on 17.02.1997. These returns were filed admittedly before the date of search under section 139(4) of the Act. The assessing officer considered the income disclosed in the returns as undisclosed income and also made an addition at Rs.1,60,00,000/- as deemed dividend in the hands of the assessee under section 2(22)(e) of the Act for the block assessment.

3. On appeal to the Tribunal, the Tribunal, after considering the materials made available before it, was of the view that there could be no question of deemed dividend in the case of assessee under section 2 (22)(e) of the Act as the very ingredient of the section was not present and the addition of amount as undisclosed by the assessing officer was already disclosed in the returns filed and on the said reasoning, allowed the appeal. The correctness of the said order is now questioned by the revenue in this appeal. The appeal has been admitted on the questions of law above referred to.

4. Learned counsel for the revenue submitted that pursuant to the search made, block assessment has been made against the company in which the respondent assessee was the Managing Director. The block assessment made against the company was the subject matter of an appeal before this Court earlier in Tax Case Nos.10 & 47 of 2000. After a detailed hearing of the learned counsel on either side, this Court in the appeal pertaining to the company thought it fit to remand the matter to the assessing officer for redoing the exercise by holding that the document seized at the time of search would at best be considered as prima facie material, except the documents there was no seizure of money, bullion, jewellery or other articles or things of value during the time of search. The said documents themselves would not be the sole criteria for estimating the undisclosed income, in view of the explanation offered by the assessee that they were prepared for the purpose of settling the dues of the outgoing director, who proposed to retire. Therefore the documents seized from the premises of the assessee at the time of search were not conclusive proof to arrive at the undisclosed income. As the subject matter of this appeal also is relating to the block assessment of the director of the same assessee, this appeal may also be remitted to the assessing officer with an observation to the assessing officer to follow the directions given in the above case since reported in 289 ITR 509.

5. Learned counsel for the respondent assessee also submits that certain points in disputes have been decided in favour of the assessee in the above said judgment. The points so held in favour of the assessee in that case can be directed to be made applicable to the respondent assessee in this case also by giving directions to the assessing officer.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

6. Having regard to the submissions made by the learned counsel on either side for the remand of the matter and taking into consideration the fact that even in the earlier case in respect of the assessee company, this Court has set aside the orders of the assessing officer and the Tribunal and remitted the matter to the assessing officer to do the framing of assessment in accordance with law, we are of the view that in this appeal is also same order could be passed. Accordingly, the order of the assessing officer as well as the Tribunal are set aside and the matter is remitted back to the assessing officer to make the assessment in accordance with law and on the basis of the materials available on record and in the light of the reasoning stated in the case of the assessee's company reported in 289 ITR 509.

sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Assistant Registrar,
   Income Tax Appellate Tribunal
   Bench'C' ,Rajaji Bhavan,
   III Floor, Besant Nagar,
   Chennai.90.

2. The Assistant Commissioner of Income Tax
   Central Circle III (3),
   Madras.34.

3. The Commissioner of Income Tax
   Tamil Nadu III,
   Madras.

+ 1 cc to Mrs.Pushya Sitaraman Advocate SR.NO.56915.

WEB COPY

KK(CO)
RD 16.9.07

https://hcservices.ecourts.gov.in/hcservices/